

REMARKS

Claims 35, 37-40, 42-45, 47-50 and 52-64 are pending in the application.

Claims 35, 37-40, 42-45, 47-50 and 52-64 have been rejected.

Claims 35, 40, 45, 50 and 55 have been amended, and reconsideration is respectfully requested in light of the remarks and arguments set forth below.

I. OBJECTION TO THE SPECIFICATION

The specification was objected to as failing to provide support for “computer usable medium” in Claim 45. Applicant notes that this element was described in the original application at original Claim 13. Applicant has amended the specification, page 5, lines 9-14 (as shown above) to include this element originally described in original Claim 13 within the specification. Withdrawal of this objection is respectfully requested.

II. REJECTION UNDER 35 U.S.C. § 101

Claims 55-63 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

The Office Action contends that each of the elements recited in the claimed system of Claim 55 are “software per se.” Applicant respectfully disagrees. Claim 55 recites “a call server system” where the call server system comprises “a private branch exchange (PBX)”, as well as a “user interface.” Neither of these elements is software per se. It is inconceivable that a private branch exchange (PBX) can only be software per se, without additional hardware elements conventionally forming the PBX. In addition, Applicant fails to understand how a user interface can only be software, without mechanical elements for input/output for a user. This rejection is not well-taken, and the Applicant respectfully requests withdrawal of the § 101 rejection of Claims 55-63.

### III. REJECTIONS UNDER 35 U.S.C. § 103

Claims 35, 37-40, 42-45, 47-50, 52-55 and 60-64 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Szlam (US Patent No. 6,359,892) in view of Perrone (US Patent No. 6,157,705). Claims 56-59 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Szlam (US Patent No. 6,359,892) in view of Perrone (US Patent No. 6,157,705) and further in view of Coffman (US Patent No. 6,385,191). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on

applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

The Office Action rejection of independent Claim 35 points to Szlam's Main Office 13 (and controller 225 and PB 216) as meeting Applicant's claimed "call server system" having a PBX and call server for controlling telephony calls and telephony services. Notably, the Office Action concedes that Szlam fails to disclose or describe "providing a communication channel between the web application and the call server system." See, Office Action, page 4. Also, notably, the Office Action does not explicitly identify which element in Szlam is deemed equivalent to Applicant's "web application." Despite this, the Office Action appears to argue that the controller 225 translates commands from a web application to the call server system from a web application format into a call server system format (citing controller 225, col. 9, lines 46-60, col. 12, lines 45-57). Thus, it appears the Office Action deems the remote communications device 10 to constitute the "web application."

To more distinctly point out and claim the subject matter applicant regards as the invention, independent Claims 35, 40, 45, 50 and 55 have been amended to recite that the web application is accessed from a web server. In contrast, Szlam's remote communications device 10 includes a fax-modem and resident application software to provide communications to the remote access controller 225. Szlam, Col. 7, lines 18-43. In contrast, the independent Claims recite that "the web application is accessed from a web server," while the wrapper provides a communication channel between the web application and the call server system. Szlam's remote communications device 10 appears to directly communicate with the remote access controller 225 through the use of specialized application software resident on the remote communications device 10. Unlike Szlam, the claimed invention allows for a remote device to access a web application from a web server using

conventional application software, such as a browser, and the web application interfaces with the wrapper. Therefore, the web server provides the web application (e.g., through remote downloading of the web application, or interfacing over the network to the web application operating at the web server) in contrast with Szlam's remote communication device. See, Applicant's specification, Figures 6, 7.

Therefore, Szlam fails to disclose that the web applications is accessed from a web server. Moreover, it does not appear that Perrone discloses or teaches this element. Accordingly, Applicants respectfully request the Examiner withdraw the § 103(a) rejections of Claims 35, 37-40, 42-45, 47-50, 52-55 and 60-64. For the same reasons, the rejections of Claims 56-59 should also be withdrawn.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

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If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Nortel Networks Deposit Account No. 14-1315.

Respectfully submitted,

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